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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 JOSE MARIA LOPEZ ORDUNO and
15 ANGELICA VIVIANA SANCHEZ,

16 Defendants.

Case No.: 4:20-CR-6002-SAB

Notice of Joinder

17 Plaintiff, United States of America, by and through William D. Hyslop,
18 United States Attorney for the Eastern District of Washington, and Stephanie Van
19 Marter, Assistant United States Attorneys for the Eastern District of Washington,
20 respectfully submits the following Notice of Joinder regarding the above
21 referenced cause.
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24 **I. Pursuant to Federal Rules of Criminal Procedure, Rule 8(b),**
25 **Joinder of Defendants is presumed and proper.**
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1 The general rule is that Defendants jointly charged are jointly tried. See,
2 *United States v. Van Cauwenberghe*, 827 F.2d 424, 431 (9th Cir. 1987), cert.
3 denied, 484 U.S. 1042 (1988); *United States v. Armstrong*, 621 F.2d 951 (9th Cir.
4 1980); *United States v. Brady*, 579 F.2d 1121 (9th Cir. 1978), cert. denied, 439
5 U.S. 1074 (1979); *United States v. Gay*, 567 F.2d 916 (9th Cir. 1978) cert. denied,
6 435 U.S. 999 (1978); *United States v. Mariscal*, 939 F.2d 884, 885 (9th Cir. 1991)
7 ("co defendants jointly charged are, prima facie, to be jointly tried") (emphasis in
8 original); *United States v. Escalante*, 637 F.2d 1197, 1201 (9th Cir.) cert. denied,
9 449 U.S. 856 (1980) (defendants jointly charged in conspiracy cases are
10 presumptively to be jointly tried). Where several persons are charged together
11 with committing the same offense, there is a substantial public interest in the
12 expediency of a joint trial. *United States v. Nace*, 561 F.2d 763, 769 (9th Cir.
13 1977).

14 The joinder of two or more defendants in the same indictment is governed
15 by Fed. R. Crim. P. 8(b), which provides:

16 Two or more defendants may be charged in the same indictment or
17 information if they are alleged to have participated in the same act or
18 transaction or in the same series of acts or transactions constituting an
19 offense or offenses. Such defendants may be charged in one or more counts
20 together or separately and all the defendants need not be charged in each
21 count.

22 The goal of Rule 8(b) is to "maximize trial convenience and efficiency... ."

23 *Untied States v. Sanchez-Lopez*, 879 F.2d 541, 550 (9th Cir. 1989); see *Bruton v.*
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1 *United States*, 391 U.S. 123, 131 n. 6 (1968) (Rule 8(b) is "designed to promote
2 economy and efficiency and to avoid multiplicity of trials..."). This goal "is best
3 served by permitting initial joinder of charges against multiple defendants." *United*
4 *States v. Vasquez-Velasco*, 15 F.3d 833, 844 (9th Cir. 1994); *United States v.*
5 *Baker*, 10 F.3d 1374, 1387 (9th Cir. 1993), overruled on other grounds by, *United*
6 *States v. Nordby*, 255 F.3d 1053 (9th Cir. 2000) ("[b]ecause joint trials conserve
7 funds, diminish inconvenience to witnesses and public authorities and avoids
8 delays in bringing those accused of a crime to trial, Rule 8(b) is construed liberally
9 in favor of joinder") (internal quotation and citations omitted). As such, Rule 8(b)
10 is "construed liberally in favor of joinder." *United States v. Sarkisian*, 197 F.3d
11 966, 975 (9th Cir. 1999), cert. denied sub nom, *Mikayelyan v. United States*, 530
12 U.S. 1220 (2000); *United States v. Satterfield*, 548 F.2d 1341, 1344 (9th Cir.
13 1977).

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19 In construing Rule 8(b), the Ninth Circuit has interpreted the term
20 "transaction" flexibly, and determined the existence of a "series" upon whether
21 there is a logical relationship between transactions. *Vasquez-Velasco*, 15 F.3d at
22 843; *United States v. Felix-Gutierrez*, 940 F.2d 1200, 1208 (9th Cir. 1991); *United*
23 *States v. Ford*, 632 F.2d 1354, 1372 (9th Cir.), cert. denied, 450 U.S. 934, (1981),
24 overruled on other grounds, *United States v. De Bright*, 730 F.2d 1255, 1372 (9th
25 Cir. 1984) (en banc). A "logical relationship is typically shown by the existence of
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1 a common plan, scheme, or conspiracy." *Vasquez-Velasco*, 15 F.3d at 844 (internal
2 quotation and citation omitted); see *Felix-Gutierrez*, 940 F.2d at 1208; *Ford*, 632
3 F.2d at 1372. The Ninth Circuit has stated that "[the Court] has repeatedly held
4 that a conspiracy count may provide the necessary link to satisfy the requirements
5 of Rule 8(b)" and has specifically stated that joinder is appropriate in an "instance
6 where all the criminal activities logically fall under the under the same umbrella of
7 one big conspiracy." See *Sarkisian*, 197 F.3d at 976 (discussing *Ford*, 632 F.2d at
8 1372); *United States v. Abushi*, 682 F.2d 1289, 1296 (9th Cir. 1982) (citations
9 omitted).

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13 The Court has also stated that whenever the common activity constitutes a
14 substantial portion of the proof of the joined charges, joinder is permissible.
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16 *Vasquez-Velasco*, 15 F.3d at 844; *Ford*, 632 F.2d at 1372 (quoting *United States v.*
17 *Roselli*, 432 F.2d 879, 899 (9th Cir. 1970) cert. denied, 401 U.S. 924 (1971)). For
18 example, in *Felix-Gutierrez*, the Court held that joinder of the charges was
19 appropriate due to: overlapping evidence, occurrence of events during a brief time
20 span, and participation of many of the same individuals. 940 F.2d at 1208-09.

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23 The general rule of joinder expedites the administration of justice, reduces
24 the congestion of trial dockets, conserves judicial time, lessens the burdens upon
25 citizens to sacrifice time and money to serve on juries and avoid the necessity of
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1 recalling witnesses who would otherwise be called upon to testify only once.

2 *Brady*, supra, at 1128.

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4 In this case, the Defendants are charged in the same Indictment, based upon
5 the same set of facts and circumstances. The only reason the Defendant was not
6 arrested the same time as her Co-defendant, was because she was able to evade her
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8 arrest warrant for a period of time. In this case, joinder is presumed. It would be
9 upon the Defendant to establish a valid basis for severance pursuant to Rule 14.

10 The United States therefore respectfully requests the Court to set Defendant

11 Sanchez on the same schedule for trial as has been set for Co-Defendant Orduno.

12 The United States also requests the Court to strike the Pretrial Conference and Jury
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14 Trial as assigned to Defendant Sanchez.
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18 Dated: March 13, 2020.

19 William D. Hyslop
20 United States Attorney

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22 s/ Stephanie Van Marter
23 Stephanie Van Marter
24 Assistant United States Attorney
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CERTIFICATION

I hereby certify that on March 13, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following, and/or I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant(s):

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s/ Stephanie Van Marter
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